



CITY OF ELY

501 Mill Street Ely, Nevada 89301
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Cityofelynv.gov

ELY CITY COUNCIL REGULAR MEETING

January 28, 2021 5:00 p.m. – Ely Volunteer Fire Hall – 499 Mill Street – Ely, Nevada

1. Mayor Robertson called the regular meeting of the Ely City Council to order at 5:00 P.M.; Pastor Winder offered the invocation. Mayor Robertson led in the Pledge of Allegiance, and asked for Roll Call.

Members present:

Mayor Nathan Robertson
Councilman Kurt Carson
Councilman Jim Alworth
Councilwoman Michelle Beecher

City Officials and staff present in the building or via conference call:

City Clerk Jennifer Lee
City Treasurer Janette Trask
City Attorney Shain manuele
City Administrative Assistant Patti Cobb
City Engineer BJ Almberg
City Fire Chief Pat Stork
City Police Chief Scott Henriod
Public Works Supervisor Mike Cracraft
City Building Official Brad Christensen

Also, in attendance: Members of the public in attendance at the Ely Volunteer Fire Hall signed in (appears below) and the following persons attended via video conference: Caroline McIntosh, Dalton Black, Donna Bath, Frederick Partey, Gage Zobell, Geri Wopschall, Mark Bassett, and Maureen Otzelberger.

City Council ATTENDANCE LIST

DATE: January 28, 2021

Print name below

Bill Wolf
Matthew Shapiro
Bratt Burgess
Luigi Resta
Pastor Bob Winder
M. COSTER
George Chachas

Print name below

2. PUBLIC COMMENT

Caroline McIntosh with White Pine Main Street announced a Valentine project to support local business in White Pine County. White Pine Main Street, White Pine Chamber of Commerce, and the Northern Nevada Railway are partnering on a project called “Love and Win in White Pine County.” Those wanting to participate just need to bring receipts from local businesses with a store front from February 1st through February 14th to the newly remodeled Chamber of Commerce to be entered to win great prizes. The prizes are a 55-inch HDR TV, a package of 4 Sunset Stars and Champagne tickets from Nevada Northern Railway. Ms. McIntosh stated that to sweeten the pot the first 100 people to bring in receipts will receive one free excursion ticket for the Nevada Northern Railway. The purpose is to support local businesses. Ms. McIntosh thanked the City of Ely for their support in the White Pine Main Street Project.

3. Mayor – Discussion/For Possible Action – Approval of Agenda, including removal of agenda items.

Councilman Alworth moved to respectively remove item 6B-1 from the agenda due to lack of public awareness and transparency to the City of Ely residents, and White Pine County residents. Councilman Carson seconded the motion. The motion did not pass.

Councilman Alworth recommended that rPlus Energies Representatives for the White Pine Pumped Storage Hydro Project request a Public Hearing jointly with the City Council and the White Pine County Commission.

Mayor Robertson reminded everyone that with only three councilmembers present that votes do have to be unanimous for them to pass.

Councilwoman Beecher stated that this is a discussion item only, no decisions are being made and all that can come from this presentation is knowledge. I ask that it stay on the agenda.

Councilman Alworth stated the proposed Memorandum of Understanding allowing White Pine Waterpower, LLC, to realign approximately five (5) miles of railway owned by the Nevada Northern Railway Foundation and the City of Ely is false as there is no MOU. During the White Pine County Commission Meeting it was brought up the MOU with Nevada Northern Railway and City of Ely is in negotiations; this information is false as there are no negotiations with the Nevada Northern Railway or the City of Ely, so the item is misworded.

City Attorney Manuele clarified that the representatives from rPlus Energies were there to present on the project as to what the project will potentially be. There has been a term sheet provided to the Nevada Northern Railway and City Attorney Manuele to review for a potential MOU in the future.

Councilwoman Beecher stated she is not saying how she would feel about such a Memorandum but would like to hear what the rPlus Energies Representatives have to say.

Councilman Carson stated he would like to hear what they have to say as well, but that Councilman Alworth does have a valid point on the proposed MOU.

Councilwoman Beecher moved to approve the agenda as it reads. Councilman Carson seconded the motion. The motion carried unanimously.

4. CITY DEPARTMENT REPORTS

➤ **MUNICIPAL COURT JUDGE**

Municipal Court Judge Coster reviewed his reports and emphasized there were three things he would like to touch on. Municipal Court Judge Coster stated traffic cases were down 28% last year and dispositions on cases closed was at about 92%, which was like the previous year. On the criminal side there was a 36% reduction in criminal cases last year, which includes misdemeanors, and dispositions on criminal cases increased 183%. The clerks have used the lost time in court to catch up on old dispositions for people that have moved out of state and such. It can be expected for a reduction in cases Fiscal year 2021 as much of the Covid Pandemic was in FY 2021. There was also a reduction due to Domestic Violence cases being assigned to the Justice Court whether they were in the City of Ely or County. A Domestic Violence case requires the right for individuals to have a jury trial and municipal courts in Nevada are not able to do jury trials; so the District Attorney decided to have them all go to Justice Court it is in the works for that to possibly change and I will give updates. The State Supreme Court came up with the decision that the process for pre-trial detention requirements are that the prosecutor requests detention, the evaluation of the individual as a public safety and a flight risk are taken in to consideration, and looking at alternatives to jail such as home detention, travel restrictions, or denying the right to drive pre-trial. The movement in Nevada is to not hold people pre-trial.

Mayor Robertson stated in a conversation he had with Judge Coster he asked how many people are incarcerated annually from the Municipal Court in Ely; he recalled the number was low to non-existent and wondered if the form being discussed was used regularly.

Municipal Judge Coster stated he uses the form approximately three times a month.

Mayor Robertson stated this new guidance doesn't affect what we are doing in practice, but does leave more of a paper trail on each case.

Municipal Judge Coster stated yes that is correct. This guidance possibly has slightly decreased incarcerations.

The new Justice Center is coming along, there is a lot of thought into the design, and I encouraged the Council to take a tour.

5. REPORTS

➤ MAYOR

Mayor Robertson stated that he did have a League of Cities Conference call with the other Mayors in the State and wanted to hand it to the Health Officials; Public Health Officer, Public Health Nurse, William Bee Ririe Hospital, and Economy Drug, as we are head and shoulders above getting vaccine distributed and working the priority list much quicker than many other cities our size.

6. ITEMS FOR DISCUSSION/POSSIBLE ACTION ONLY OF THE ELY CITY COUNCIL.

A. CONSENT AGENDA

MOTION: Move to approve the Consent Agenda item 6A-1 Minutes and 6A-2 Bills.

Moved by: Councilman Alworth Second by: Councilman Carson Vote: Unanimous

1. Discussion/For Possible Action –Minutes.
 - January 6, 2020 Minutes
2. Discussion/For Possible Action –Bills.
 - January 11, 2021
 - January 20, 2021

B. NEW BUSINESS

1. Mayor Robertson – rPlus Energies representatives Matthew Shapiro and Luigi Resta – Discussion Only – Presentation on White Pine Pumped Storage Hydro Project and proposed Memorandum of Understanding allowing White Pine Waterpower, LLC, to realign approximately five (5) miles of railway owned by the Nevada Northern Railway Foundation and the City of Ely.

rPlus Energies President Luigi Resta stated the intention of the presentation is to introduce the project

rPlus Energies CEO Matthew Shapiro presented information on the [White Pine Pumped Storage Hydro Project](#) on file at Ely City Hall.

Other discussion and concerns on the White Pine Pumped Storage Hydro Project are as follows:

RPlus Energies CEO matthew Shapiro stated two concerns that were heard with discussion with the railroad were the disruption to the railroad operation of tour trains, the views, and the land under the railroad is deeded to the City of Ely. Would a land swap with BLM be an option to explore to make the concept work?

Mayor Robertson noted the Special Use Permit was submitted to the Regional Planning Commission and not the City of Ely.

RPlus Energies CEO Matthew Shapiro stated the Special Use Permit application was submitted to the Regional Planning Commission.

Mayor Robertson stated that it is not a City Council planning issue and as this project moves forward clarification needs to be made on what entity is doing what as there are a lot of entities involved with this project and does not want to create unneeded confusion.

Councilman Alworth asked what is the anticipated timeline for the land swap between the City of Ely and the BLM?

rPlus Energies President Luigi Resta stated that they want to be as transparent and clear about the project as possible as the Federal Energy Regulatory Commission requires this. He stated it

is very important that all stakeholders within the City of Ely and White Pine County are aware of the project and support the project for it to be successful. The Importance of the Memorandum of Understanding and the Term Sheet is to layout rPlus Energies is responsible for all environmental, cultural, resource, easements, and survey work associated with the BLM right away and the transfer which will be approximately a year worth of study for the realignment on the five miles. The Memorandum of Understanding with the City of Ely and the Northern Nevada Railway is that both entities must make the application for the SF299 but rPlus energies will cover all the costs. The work cannot start until the SF299 right of way has been approved. The process will be to submit the SF299, which is the right of way for the realignment of the railroad, along with all the environmental studies that need to accompany that. The next course of action will be once the right of way is granted, that is the building of the new realignment of the railroad while the old railroad still runs. The land swap would be completed after the build with the City of Ely taking over the land on the upper hill where the new track would be, and the BLM will take over the lower land. In the Memorandum of Understanding it will state that rPlus Energies will be responsible for all expenses related to the project including legal fees for the City of Ely and the Nevada Northern Railway Foundation.

Mayor Robertson stated it is his understanding that the land is owned by the City of Ely and the Nevada Northern Railway Foundation, so rPlus Energies would have to get approval from both the City Council and the Nevada Northern Railway Board.

City Attorney Manuele confirmed that he is working in conjunction with the attorney for the Nevada Northern Railway Foundation reviewing the Term Sheet and will report back to the Ely City Council.

Councilman Carson asked where will the power that's generated go?

rPlus Energies President Luigi Resta stated it is not power that will go anywhere but will act as a big battery for the State of Nevada. The battery will be able to produce 1/7th of the States power for eight hours in any given time period. It is expected that as the State has already voted and approved to go to a 50% renewable standard by 2030 and to a 100% renewable standard by 2040 that this would be an integral part to meet those goals at the State level.

Councilman Alworth asked when the pump is turned on to pump the water back up to the reservoir whose electricity will be purchased?

rPlus Energies President Luigi Resta stated the new 345 KV line that goes from the powerhouse at the pump storage to Robinson Summit will be high voltage; it is expected to meet the renewable standards that the State will build more solar than they can consume at any time and that solar will be used to pump the water up the hill and likely come through the NV Energy System. I have met with Mt. Wheeler Power and they are not able to buy 1,000 megawatts, but they are aware of the project.

Councilman Alworth stated it is sad that a local company, Mt. Wheeler Power, can't be used for the power. On the term sheet provided on the Railway realignment it makes the City of Ely look like we are in line with the whole project and states that the MOU may serve to demonstrate ongoing collaboration among the Parties, which may strengthen greater public awareness of the project and assist in local, state, and federal permitting. It is my understanding with this MOU is that the City of Ely is agreeing to the whole two-billion-dollar project. He stated at Duck Creek where the dam will be, which is a BLM and a White Pine County issue, how will a road be built up there as it will take dozers and big equipment and have a massive mess in Duck Creek? The City is becoming part of this project by agreeing to this. The public needs to hear about it and have input.

City Attorney Manuele stated the Term Sheet is the beginning stages of working towards a potential Memorandum of Understanding and the presentation was to answer preliminary questions.

Councilman Alworth stated there was a nine-page study dated October 29th from the Center of Biological Diversity that really puts a lot of questions on this project. There are 4,000+ residents in the City and we are deciding for the residents what's going to affect the future of this community and why we live in White Pine County.

Mayor Robertson stated Mr. Shappiro and Mr. Resta had contacted him and stated the issue is the decisions that the Council needs to make and the only place for this information to be presented is in a public body. The issues that Councilman Alworth is bringing up can be discussed in a public body with Mr. Shappiro and Mr. Resta. The Council has control over these decisions. The City's actual legal impact is the track and the work that will need done to complete a property swap, but the interest of the community is well taken.

Councilman Alworth stated City Attorney Manuele talked about the construction of the MOU; where did the authority come from for City Attorney Manuele to do this?

Mayor Robertson stated there is no constructing of an MOU. The Term Sheet was constructed by rPlus Energies to be reviewed by City Attorney Manuele and then the City Council and there will be several steps to go before a Memorandum of Understanding is constructed. The next step for the City Council would be to put a Memorandum of Understanding on the agenda to start reviewing it and then voting could happen on changes that need to be made or if it is something to pursue at all.

rPlus Energies President Luigi Resta stated we want to do a project the community can be proud of with the understanding of the impact on Duck Creek during the 5-year construction period; after that, the two reservoirs will have minimal to no impact on the environment. Part of the Federal Energy Regulatory process is the federal overview to make sure there is not an impact by scrutinizing the work being done.

2. Mayor Robertson – Discussion/For Possible Action – Approval to apply for Great Basin Heritage Foundation grant in the amount of \$20,000.00 with required match to be met using previously received Commission for Cultural Centers Historic Preservation grant.

Mayor Robertson stated this grant would be to augment the funds that we got from the Commission for Cultural Centers Historic Preservation Grant (CCCHP) to continue repairs on windows and masonry on City Hall. This grant does require a match and since we have State fund grants already, we can use those to match these federal funds, so there is nothing coming out of the general fund for that I am seeking approval to apply for this grant as it is due on February 5, 2021.

Councilman Alworth moved to approve the application for the Great Basin Heritage Foundation grant in the amount of \$20,000.00 with required match to be met using previously received Commission for Cultural Centers Historic Preservation grant. Councilwoman Beecher seconded the motion. The motion carried unanimously.

3. Mayor Robertson – Discussion/For Possible Action – Reappoint John O'Flaherty and Ken Ross to the Municipal Utilities Board through December 31, 2023.

Councilman Alworth moved to reappoint John O'Flaherty and Ken Ross to the Municipal Utilities Board through December 31, 2023. Councilman Carson seconded the motion. The motion carried unanimously.

4. Mayor Robertson – Discussion/For Possible Action – Approval to reappoint the following Council Members to the following White Pine County Boards: Reappoint Jim Alworth to the Debt Management Commission, the Board of Equalization, and Regional Transportation Commission; reappoint Ed Spear to the Local Emergency Planning Committee; reappoint Kurt Carson to the Tourism and Recreation Board; and reappoint Ernie Flangas to the Water Advisory Committee and Soil Conservation District; all appointments will be through December 31, 2021.

Councilwoman Beecher moved to approve the reappointment of the following Council Members to the following White Pine County Boards: Reappoint Jim Alworth to the Debt Management Commission, the Board of Equalization, and Regional Transportation Commission; reappoint Ed Spear to the Local Emergency Planning Committee; reappoint Kurt Carson to the Tourism and Recreation Board; and reappoint Ernie Flangas to the Water Advisory Committee and Soil Conservation District; all appointments will be through December 31, 2021. Councilman Carson seconded the motion. The motion carried unanimously.

5. Councilman Carson – Discussion/For Possible Action – Discussion regarding Robinson Nevada Mining Company's counteroffer for the City of Ely to purchase the building at #1 Murry Springs at fair market value or renew the Assignment of Lease of Real Property under the previous terms.

City Attorney Manuele stated this is a result of a 2010 lease agreement between the City of Ely and Robinson Mine. The agreement included a provision for an extension of an additional 25 years on the same terms and covenants. The requirement to exercise that provision was that the Mine send written notice 180 days prior to termination to extend the term of 25 years; Robinson Mine did do that. Commonly contracts will include provisions that says we can renegotiate at that time and this particular contract does not include this, but I felt comfortable reaching out to the Robinson Mine to see if they would be willing to renegotiate those terms. Robinson Mine did respond and stated the lease agreement does not allow for that; they did indicate they were willing to negotiate and offered if the City of Ely were to purchase the building at fair market value, Robinson Mine will withdraw their notice of intent to renew the lease and the lease will expire and the City of Ely will own the building and the property. Robinson Mine will agree to negotiate in good faith with the City of Ely regarding fair market value of the building. City Attorney Manuele stated on the agenda item today there are two options. It can be explored for the City of Ely to purchase the building or not pursue that, and the lease will renew under the terms of the contract.

Councilman Carson stated this lease is not a good lease and I do not feel like the City of Ely is in a position to purchase the building at this time.

Mayor Robertson asked if there was any idea of what the fair market value of the building would be at this time on the building?

Councilman Carson stated that it is a red iron building, so I guess it would be well over \$200,000.00.

Mayor Robertson stated it might be worth finding out what the fair market value is.

Councilwoman Beecher stated we have looked at this lease before and the problem was the 25-year term.

Mayor Robertson stated it was proposed to change the term to 10 years.

Councilman Carson stated the City of Ely does not have to have the building. It was just an idea since Robinson Mine was not using it and it was convenient to put the Water Department and some equipment there. We have land at the sewer treatment plant that we could always budget for a small building to house the Water Department and equipment if needed.

Mayor Robertson stated if the City of Ely bought that building, would Robinson Mine still need to monitor the wells on that property.

Councilman Alworth stated the City of Ely would have to pay for an appraisal if we decide to purchase the building and that can be very expensive.

City Attorney Manuele stated if the City of Ely wants to purchase the building and have an appraisal done, it would have to be done before the end of February.

Councilwoman Beecher stated this does not seem feasible as there is nobody in Ely that can do this type of appraisal and to have someone come from out of town by the end of February is probably not possible.

Councilwoman Beecher moved to not seek purchase of the building and to continue with the lease with Robinson Mine as is. Councilman Carson seconded the motion. The motion carried unanimously.

6. Councilman Alworth – Discussion/For Possible Action – First Reading of Ordinance 738, Bill 2021-01, with approval to move to the second reading. Ordinance 738 amends Chapter 1 of Title 4 of the City Code of the City of Ely replacing chapter 1 in its entirety regarding Public Nuisances.

Councilman Alworth stated the Counselor and Blight committee worked on bringing the Ordinance up to date.

Mayor Robertson agreed with Councilman Alworth and stated there has been a lot of work to clean up the code book.

Councilman Carson moved to move Ordinance 738 to the second reading. Councilwoman Beecher seconded the motion. The motion carried unanimously.

7. Councilman Alworth – Discussion/For Possible Action – First Reading of Ordinance 739, Bill 2021-02, with approval to move to the second reading. Ordinance 739 amends Chapter 2 of Title 4 entitled Public Health and Safety, Garbage and Refuse, Abatement of Unsafe Buildings, Filth, Rubbish of the City Code of the City of Ely specifically changing the timeframes outlined in Section 14.

Councilman Alworth stated the big key is streamlining, so it is not such a lengthy process and things are addressed.

Councilman Carson moved to move Ordinance 739 to the second reading. Councilwoman Beecher seconded the motion. The motion carried unanimously.

8. Councilman Alworth – Discussion/For Possible Action – First Reading of Ordinance 740, Bill 2021-03, with approval to move to the second reading. Ordinance 740 amends Chapter 3 of Title 4 entitled Public Health and Safety, Weeds, Debris and Other Offensive Matter of the City Code of the City of Ely specifically changing the timeframes outlined in Section 3.

Councilman Alworth stated once again the changes are to streamline the process to address these issues in a timely manner.

Councilwoman Beecher moved to move Ordinance 740 to the second reading. Councilman Alworth seconded the motion. The motion carried unanimously.

9. Councilman Alworth – Discussion/For Possible Action – Approval of monthly balance sheets for general fund, street fund and enterprise funds.

Councilman Alworth stated the financials that are usually provided have a lot of information and detail. The balance sheet is a way to see how the business is ran and how the City is doing financially for the general public awareness and those Council members that want to see how the City is doing financially in a quicker way.

City Treasurer Trask stated she felt the City of Ely is doing well but wanted to clarify that the CTX comes in two months behind, so we are always playing catch up with that. Everyone is doing very well with the conservative budget this year.

Councilman Alworth commended staff for the hard work on the balance sheet and stated for the first time in a long time, the balance sheet balances and that is what is needed to run a business.

Mayor Robertson stated he echoes what Councilman Alworth stated and stated that other cities budgets from around the State have been reviewed and I feel the difficulty of running the City of Ely. There is no other City funded quite the way we are and commends City Treasurer Trask and the City Council for making it work.

City Treasurer Trask stated we are five months in on the expense side and two months in on the revenue side. I am expecting to have to augment some of the budgets as they were very tight. The Fire Department is the main budget that will need to be augmented, but stated that Fire Chief Stork is doing a great job.

Councilman Alworth commended the staff and administration of the City of Ely working hard to keep the City solvent.

Councilman Alworth moved to approve monthly balance sheets for the general fund, street fund and enterprise funds. Councilwoman Beecher seconded the motion. The motion carried unanimously.

10. City Clerk Lee – Discussion/For Possible Action – Direction to City Attorney Manuele to prepare revisions to Tree Board and Animal Control Advisory Board Codes changing the Boards to Clerk-appointed standing city committees.

Bill Wolf, Chairman of the Tree Board, stated this would be an improvement because they have not been meeting obligations of a regular board regarding meeting regularly and notifications. Changing the Tree Board to a standing committee will work much better. We only meet a couple times a year for certain events such as Arbor Day and going after grant money to get trees.

City Clerk Lee stated what Chairman Bill Wolf stated applies to the Animal Control Advisory Board too. The Animal Control Advisory Board are interested in grants and don't have business they need to address every month.

Bill Wolf, Chairman of the Tree Board, asked that if he could continue to get the document from the City of Ely Treasurer for the Tree City USA Certification for the Arbor Day Foundation.

Councilwoman Beecher moved to direct the City Attorney to prepare revisions to the Tree Board and Animal Control Advisory Board Codes changing the Boards to Clerk-appointed standing city committees. Councilman Carson seconded the motion. The motion carried unanimously.

9. PUBLIC COMMENT

Mr. Chachas stated his ongoing concerns regarding a permit to reroof his property at 490 High Street; billing not being corrected to date for his property at 490 High Street; utility billing; curb/gutter codes not being enforced; meeting minutes not being presented in the time limit set by the Nevada Open Meeting Law; RV's not permitted properly; and not being reimbursed for taking care of the sewer problem at 681 Parker. Agenda item 6B-3 to reappoint John O'Flaherty and Ken Ross to the Municipal Utilities Board, that item needs to be advertised. Agenda item 6B-10 to consider changing the Tree Board and Animal Control Advisory Boards to Clerk-appointed committees, I am against that and those appointments should be made by elected officials.

10. ADJOURNMENT: THE MEETING MAY BE ADJOURNED BY APPROPRIATE MOTION OF THE CITY COUNCIL.

Councilwoman Beecher moved to adjourn the Regular meeting of the Ely City Council at **6:17 p.m.** Councilman Alworth seconded the motion. The motion carried unanimously.

MAYOR

ATTEST